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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,120	02/13/2002	Clive Pai	6370	7283

22922 7590 03/09/2005

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EXAMINER

MARMOR II, CHARLES ALAN

ART UNIT PAPER NUMBER

3736

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/075,120

Applicant(s)

PAI ET AL.

Examiner

Charles A. Marmor, II

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-13 and 18-22 is/are allowed.
- 6) ☒ Claim(s) 14-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is responsive to the Amendment filed February 4, 2005. The Examiner acknowledges the amendments to claim 14. Claims 1-22 are pending.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 14-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Wolff et al. ('767). Wolff et al. teach a measurement device that is capable of determining thoracolumbar position in the sagittal plane. Claim 14 includes the transitional phrase "comprising" which is inclusive or open-ended and does not exclude additional, unrecited elements. The "Wolff" device includes at least one vertical reference component 5,6, at least one horizontal reference component 11, and at least one reference housing component 10. The vertical and horizontal reference components are positioned substantially perpendicular one to another within a housing component. A substantially level seat component 4 supports the vertical reference components and is substantially perpendicular therewith, where "seat" is defined as "the place where something is located or based" (*The American Heritage Dictionary of the English Language*, ©1992). Each housing component 10 defines at least one aperture therethrough for receiving the

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reference components. The seat component **4** includes a substantially vertical reference member **16** a distance apart from the vertical reference components. Each vertical reference component **5,6** may define a vertical axis and a vertical linear coordinate measurement may be made with respect to the plurality of holes **7** on the vertical reference components. Each horizontal reference component **11** may define a horizontal axis and a horizontal linear coordinate measurement may be made with respect to the plurality of holes **12** on the horizontal reference components. The horizontal reference components **11** are provided with leveling components **15** thereon. The horizontal and vertical reference components are disposed within a main reference housing component formed by the seat component **4**, top housing component **1**, and vertical housing components **2,3**.

Allowable Subject Matter

4. Claims 1-13 and 18-22 are allowed.

5. The following is an examiner's statement of reasons for allowance:

Regarding claims 1-8, no prior art of record teach or fairly suggest a method of assessing spinal reposition sense where a test subject is engaged in a thoracolumbar movement with a range of motion through the sagittal plane, a flexion position is selected that has a vertical coordinate and a horizontal coordinate, the subject's ability to reposition to said flexion position is recorded, and the vertical coordinate and horizontal coordinate of the sensed reposition is compared with the coordinates of the selected flexion position.

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Regarding claims 9-13, no prior art of record teach or fairly suggest a method of using linear coordinates to determine the angle of thoracolumbar flexion in the sagittal plane, where the subject is seated on a level seating surface, vertical linear coordinates and horizontal linear coordinates relative to a provided vertical reference are measured at C7-T4 on the subject, and the angle of flexion of the thoracolumbar spine is trigonometrically determined using the measured linear coordinates.

Regarding claims 18-22, no prior art of record teach or fairly suggest a method of using a thoracolumbar measurement system having a vertical reference component positioned perpendicular to a horizontal reference component within a reference housing component, and a level seating component supporting the vertical reference component, to clinically assess the spinal reposition sense of a test subject.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

6. Applicant's arguments filed February 4, 2005 have been fully considered but they are not persuasive. Applicant contends that the Wolff apparatus discloses a plurality of force-measuring components, none of which provide vertical or horizontal references. This argument is not persuasive.

As discussed above, structural elements (5, 6) may be considered vertical reference components that define vertical axes and vertical linear coordinates may be determined relative to the holes (7) formed thereon. Moreover, structural elements (11) may be considered horizontal reference components that define horizontal axes and horizontal linear coordinates may be determined relative to the holes (12) formed thereon. The limitations vertical and horizontal reference components do not clearly define in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

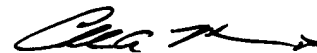
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Marmor, II whose telephone number is (571) 272-4730. The examiner can normally be reached on M-TH (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Charles A. Marmor, II
Primary Examiner
Art Unit 3736

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March 1, 2005